

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

JOSE JIMINEZ §
v. § CIVIL ACTION NO. 6:06v126
BRENDA RENNER, ET AL. §

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
DENYING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

The Plaintiff Jose Jiminez, proceeding through counsel, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights during his confinement in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

On November 20, 2006, the Defendants Christopher Divin and Brenda Renner filed a motion for summary judgment.¹ The Magistrate Judge reviewed this motion and determined that summary judgment was precluded by the existence of disputed issues of fact. Accordingly, the Magistrate Judge issued a Report on December 12, 2006, recommending that the motion for summary judgment be denied. No objections have been received to this Report; accordingly, the parties are barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-

¹Since filing the lawsuit, Jiminez says, he has learned that Renner was not on duty at the time; rather, it was Officer Denise Freshour. He has not sought to add Freshour to the lawsuit, and in fact filed an amended complaint naming Divins alone.

to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has carefully reviewed the pleadings and documents in this case, as well as the Report of the Magistrate Judge. Upon such review, the Court has concluded that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the motion for summary judgment filed by the Defendants Christopher Divin and Brenda Renner (docket no. 40) is DENIED.

So ORDERED and SIGNED this 12th day of February, 2007.

A handwritten signature in black ink, appearing to read 'Leonard Davis', written over a horizontal line.

**LEONARD DAVIS
UNITED STATES DISTRICT JUDGE**